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October 9, 2002

Mariene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth St., SW, TW-A325
Washington, DC 20554

RE: TRS Cost Recovery
CC Docket No. 98-67

Dear Ms. Dortch:

In the Declaratory Ruling and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-67 on the Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, released April 22, 2002, the FCC directed the Interstate Telecommunications Relay Services Fund Advisory Council and the Fund Administrator to develop guidelines for cost recovery for Internet Protocol (IP) Relay within six months of release of the Declaratory Ruling. Enclosed are an original and four copies of the Recommended IP Relay Cost Recovery Guidelines as required by the Declaratory Ruling.

Acknowledgement and date of receipt of this letter is requested. A duplicate copy has been provided for that purpose.

Sincerely,

A handwritten signature in black ink that reads "John Ricker". The signature is written in a cursive, flowing style. A long, thin diagonal line extends from the bottom left of the signature, possibly indicating a checkmark or a signature line.

Enclosures

CC: M. Egler
E. Einhorn
P. Gregory
S. Webber
J. Sievert
A. Firth

No. of Copies Made
List ABOVE

Handwritten initials "OT4" in black ink. The letters are written in a stylized, somewhat blocky font. The "O" and "T" are connected, and the "4" is written as a simple numeral.

I. Chandler

**RECOMMENDED INTERNET PROTOCOL (IP)
COST RECOVERY GUIDELINES**

Required by the FCC Declaratory Ruling and
Second Further Notice of Proposed Rulemaking
CC Docket No. 98-67, FCC 02-121
Released April 22, 2002

Developed and submitted by the
Interstate TRS Fund Advisory Council
and the TRS Fund Administrator
October 9, 2002

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INTRODUCTION

On April 22, 2002, the Federal Communications Commission (FCC or the Commission) released a Declaratory Ruling and Second Further Notice of Proposed Rulemaking (Declaratory Ruling), which found that Internet Protocol (IP) Relay falls within the statutory definition of Telecommunications Relay Service (TRS) and that such services are eligible to recover their costs in accordance with Section 225 of the Communications Act of 1934, as amended.¹ Because there is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate, the FCC authorized recovery of all costs of providing IP Relay from the Interstate TRS Fund until a determination is made concerning the development of a permanent IP Relay cost recovery formula.

The FCC directed the Interstate TRS Fund Administrator (the Administrator) and Interstate TRS Fund Advisory Council (the Council) to develop cost recovery guidelines for IP Relay based on the Declaratory Ruling within six months of its release. Consequently, cost recovery guidelines are due to the FCC by no later than October 22, 2002. The Commission further directed the Administrator and the Council to consider comments in this proceeding in developing guidelines and to carefully examine any differences in the costs of providing IP Relay and public switched telephone network (PSTN)-based TRS. The Commission plans to provide the public an opportunity to comment on the recommended guidelines before final approval is given.²

¹ Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., CC Docket No. 98-67, Declaratory Ruling and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 7779 (2002)(Declaratory Ruling).

² Id. at *23.

BACKGROUND ON INTERSTATE TRS FUND

In a July 26, 1991 Report and Order, the FCC ordered that TRS be available nationwide by July 26, 1993.³ On July 20, 1993, the FCC released its Third Report and Order, which ordered that the costs of interstate TRS be recovered from all subscribers of every interstate service, utilizing a shared-funding cost recovery mechanism.⁴ TRS providers have been reimbursed from the interstate fund since July 26, 1993.

In the Third Report and Order, the FCC required TRS providers to submit annually to the Fund Administrator the data necessary to determine the TRS Fund requirements and payments. The Administrator uses the data provided to develop formulas that are filed annually with the Commission for its approval; payments are distributed based on the approved formulas. Formulas are based on minutes of use for completed interstate TRS calls, beginning after call set-up and concluding after the last message call unit.

The Third Report and Order mandated that every carrier providing interstate telecommunications services contribute to the TRS Fund on the basis of gross interstate and international telecommunications revenues. In July 1999, in its Order streamlining carrier reporting requirements in CC Docket No. 98-171, the FCC changed the contribution base to end-user interstate and international telecommunications revenues.⁵

³ Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, *Report and Order and Request for Comments*, 6 FCC Rcd 4567 (1991) (Report and Order).

⁴ Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, *Third Report and Order*, 8 FCC Rcd 5300 (1993) (Third Report and Order).

⁵ 1998 Biennial Regulatory Review -- Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, 14 FCC Rcd 16602 (1999). These contributions are made by carriers offering interstate services including, but not limited to, cellular telephone and paging; mobile radio; operator services; personal communications service (PCS); access (including subscriber line charges); alternative access and special access; packet-switched; WATS; 800; 900;

Contributors' payments to the TRS Fund are calculated by multiplying their end-user revenues for the prior calendar year by a contribution factor determined annually by the Fund Administrator and approved by the Commission. The factor is based on the ratio of expected TRS Fund expenses to interstate end-user telecommunications revenues. Each carrier must contribute a minimum of \$25 per year.

On March 6, 2000, the Commission released a Report and Order and Further Notice of Proposed Rulemaking (March 6th Order), which amended the Telecommunications Relay Services (TRS) rules to expand the kinds of relay services available to consumers and to improve the quality of TRS.⁶ This Order mandated Speech-to-Speech (STS) and interstate Spanish to Spanish services. Video Relay Service (VRS) was encouraged but not required. Interstate Spanish to Spanish and STS calls, and all VRS calls were to be reimbursed from the TRS fund.

The FCC directed the Administrator and the Council to develop guidelines for interstate cost recovery for the changes to TRS adopted in the March 6th Order. On November 9, 2000, the Recommended TRS Cost Recovery Guidelines were filed with the Commission. On December 21, 2001, the FCC released a Memorandum Opinion and Order and Further Notice of Proposed Rulemaking approving the recommendations for TRS with the exception that the Commission did not require that data on costs of Spanish to Spanish be collected separately.⁷

message; telephone service; private line; telex; telegraph; video; satellite; intraLATA; international and resale services. See 47 C.F.R. § 64.604 (c)(5)(iii)(A).

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 5146 (2000) (March 6th Order); *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, *Order on Reconsideration*, 16 FCC Rcd 4054 (2000).

⁷ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Recommended TRS Cost Recovery Guidelines, Request by Hamilton Telephone Company for Clarification and Temporary Waivers, CC Docket No. 98-67, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 22948 (2001) (December 21st Memorandum Opinion).

Regarding STS, the Commission agreed that the same cost recovery methodology as traditional TRS should be used and that a separate per-minute reimbursement rate should be developed because of the unique characteristics of the service.⁸

The Commission directed the Administrator to establish an interim VRS cost recovery rate using an average rate per minute methodology pending collection and evaluation of additional data on VRS costs. The FNPRM sought comments on VRS reimbursement; a final decision has not yet been reached.

Currently, the Administrator reimburses providers as follows:

- Traditional interstate and international TRS calls are reimbursed on a completed minute basis at the FCC approved rate; an allocation of toll-free and 900 call minutes is included.
- Traditional Spanish interstate and international TRS calls are reimbursed on a completed minute basis at the FCC approved traditional TRS rate; an allocation of toll-free and 900 call minutes is included.
- STS interstate and international calls are reimbursed on a completed minute basis at a separate FCC approved rate; an allocation of toll-free and 900 call minutes is included.
- STS Spanish interstate and international TRS calls are reimbursed on a completed minute basis at the FCC approved STS rate; an allocation of toll-free and 900 call minutes is included.
- All VRS minutes (intrastate, interstate and international including toll-free and 900 calls) are reimbursed on a completed minute basis at a separate FCC approved rate.

⁸ *Id.*

This reimbursement methodology is to be used on an interim basis. (The ability to relay calls in Spanish is not required for VRS.)

COST RECOVERY FOR INTERNET PROTOCOL (IP) RELAY

IP Relay

Traditional TRS calls, using the *public switched telephone network (PSTN)*, are initiated by a text or voice user dialing 7-1-1 or a toll-free number. The Automatic Number Identification (ANI) transmitted with the call to the relay center identifies the caller's location and, with the called number, enables the relay service provider to determine if the call is intrastate or interstate. This information allows the carrier to bill the end user based on the jurisdiction of the call, and establishes whether the relay provider is eligible for compensation from the interstate fund.

With IP Relay, a user establishes a local connection to an Internet service provider (ISP) using a computer or other IP-capable device. The user points his/her web browser to the Internet address, reaches the relay center and a regular relay session begins. There is currently no automatic means for determining whether a call made via IP Relay is intrastate or interstate because Internet addresses have no geographic correlates. Thus, the relay provider has no way of determining whether the call is eligible for compensation from the interstate fund. For the same reason, end user billing is not feasible.

According to the Declaratory Ruling, all minimum relay service standards are applicable to IP Relay except for the following items that have been waived by the FCC:

- Emergency call handling is waived for one year. At the end of this waiver period, the FCC expects providers will have devised a method by which they can automatically transfer calls including location information to emergency services' providers.
- Equal access to interexchange carriers is waived permanently. The FCC believes that a consumer will be able to use the interexchange carrier of her choice by using that carrier's IP Relay offering. The requirement is waived permanently as long as IP Relay providers continue their policy of not charging customers for long distance calls.
- Voice initiated calls, including voice carryover (VCO) and STS, are waived for one year while the FCC inquires further into the problems and possibilities presented by voice access.

Comments Received in the Proceeding

In response to the Second Further Notice of Proposed Rulemaking, six comments and two reply comments were submitted.⁹

AT&T agrees with the FCC's tentative proposal to define IP Relay calls as intrastate or interstate in the same way as PSTN based TRS calls.¹⁰ "AT&T does not believe the Commission should attempt to devise a method for allocating IP Relay calls as intrastate or interstate until such time as the industry or the Commission has developed a mechanism to accurately and verifiably determine the geographic location of the calls' originators."¹¹ According to AT&T,

⁹ Comments were filed by AT&T, Inc. (AT&T), the Missouri Public Service Commission (Missouri), Sprint Corporation (Sprint), Telecommunications for the Deaf, Inc. (TDI), Verizon telephone companies (Verizon), and WorldCom, Inc. (WorldCom). Reply comments were filed by Hamilton Relay Inc. (Hamilton) and TDI.

¹⁰ AT&T at 3.

¹¹ *Id.* at 3.

the toll free allocation method is not currently workable because the *originating callers' states* cannot be determined. If funding for IP Relay is depleted, "the Commission and industry IP providers can jointly develop plans for responding to the need for developing an interim allocation method."¹² AT&T states that requiring callers to sign up now, however, will impose substantial burdens on IP providers and may create artificial deterrents to customers' use of IP service.¹³

In reply comments, Hamilton concludes that "the record plainly establishes both that the Commission has adequate authority and that only continuing to provide *full cost recovery* for IP Relay service via the interstate TRS Fund comports with the strong public policy favoring expansion of the functionally equivalent services available to persons with hearing and speech disabilities."¹⁴

The Missouri Public Service Commission (Missouri) believes the Commission has the authority to allocate IP Relay costs to the interstate jurisdiction permanently. "Since the FCC previously determined that Internet traffic is interstate in nature . . . it is also appropriate to allocate IP Relay calls as interstate."¹⁵ Missouri questions how state commissions could "track non-state certified or regulated entities and the ability of state commissions to determine that such entities could legitimately bill and be compensated for IP Relay calls" if the FCC determines some costs should be recovered as intrastate.¹⁶ If the Commission determines that it

¹² *Id.*

¹³ *Id.* at 3-4.

¹⁴ Hamilton at 4-5.

¹⁵ Missouri at 2.

¹⁶ *Id.* at 3.

is appropriate to allocate funds jurisdictionally, Missouri suggests the same rationale as used with toll free calls.¹⁷

Sprint also believes that IP Relay providers should receive compensation from the interstate TRS fund for all IP calls. “Developing an allocation method to assign calls to either interstate and intrastate jurisdictions is simply not a viable solution.”¹⁸ Sprint feels that a state whose citizens don’t use IP Relay *a great deal will not want to subsidize a state whose citizens are heavy users of the service.* Sprint has found that TRS users do not establish profiles for traditional TRS and may simply forego using IP Relay if registration is required.¹⁹ If the FCC decides to use an allocation factor, Sprint thinks the Interstate TRS Advisory Council in conjunction with the Fund Administrator should be charged with the task.²⁰

Telecommunications for the Deaf, Inc. (TDI) notes that “Section 225’s plain language as well as its overriding policy objectives afford the Commission the discretion to retain the interstate TRS funding mechanism as established in the (Declaratory Ruling) on a long term basis.”²¹ TDI believes that funding IP Relay from the interstate TRS fund will “maximize the benefits of this technological innovation to the deaf community and the hard of hearing population, and their respective contacts.”²² According to TDI, interstate-only funding eliminates the need for IP providers to “endure an extraordinarily cumbersome and varied intrastate cost recovery authorization and approval process, while also providing assurance that

¹⁷ *Id.*

¹⁸ Sprint at 2.

¹⁹ *Id.*

²⁰ *Id.* at 3.

²¹ TDI at 3.

²² *Id.* at 3.

both intra- and interstate costs will be recouped.”²³ TDI thinks the Commission should revisit IP Relay funding every three years to determine if new technology or other circumstances make it feasible to change the funding scheme.²⁴

TDI applauds the competitive, multi-vendoring aspects of IP Relay but realizes that the only way the benefits will be achieved “is if the Commission’s regulation is conducive to market entry – i.e., undue administrative burdens are minimized and cost recovery is secured.”²⁵

TDI believes that requiring “user profiles invades the privacy interests of IP Relay users” and notes that profiles are not required to use traditional TRS.²⁶ IP Relay users should be able to use the service as anonymously as other consumers use the telephone. Requiring profiles will discourage consumers from using IP Relay.²⁷ In its reply comments, TDI expressed concern with Verizon’s proposal for mandatory profiles, believing such an extreme measure to be premature.²⁸

TDI thinks it is too early to develop an accurate fixed allocator because IP Relay is still so new. TDI states that the Commission should seek input from the Interstate TRS Fund Advisory Council on the use of a fixed allocator.²⁹

If the Commission decides that IP Relay cost recovery must be split between the intra- and interstate jurisdictions, TDI asks the Commission to help reduce the administrative burden this will cause IP providers. IP providers should not be faced with having to certify in 50 states

²³ *Id.* at 6.

²⁴ *Id.* at 9.

²⁵ *Id.*

²⁶ *Id.* at 4.

²⁷ *Id.*

²⁸ TDI Reply comments at 2.

²⁹ TDI at 12.

in order to be reimbursed for intrastate service. TDI suggests that the Fund Administrator “reimburse IP Relay providers entirely from the interstate fund for all calls, with the understanding that (the Administrator) would recoup from intrastate funds the amounts applicable for intrastate calls.”³⁰ If that suggestion is not feasible, the Commission should explore other alternatives.³¹

Verizon believes the Commission “can, and in the short term should, designate all recovery of IP Relay costs through the interstate system, as it will be simpler and cheaper to administer than any allocation method.”³² As IP Relay grows or if it becomes possible to determine the caller’s location, cost recovery for IP Relay should be revisited.³³

Verizon also believes that, in order to curb fraud “and to preserve IP Relay services and TRS funds for the exclusive use of U.S. residents,” the Commission should require all users to register at least their names and addresses to access IP Relay. Verizon cited Maryland Relay as an example of IP Relay service requiring registration.³⁴ Verizon thinks users should also have to certify that they have a hearing or speech disability requiring the use of text equipment.³⁵

WorldCom comments that the Commission has authority to reimburse all IP Relay calls from the Interstate TRS Fund and that it “should exercise this authority . . . in order to guarantee providers of this service the reimbursement certainty they will need in order to expand this innovative service offering.”³⁶ The suggested allocation options would “increase administrative

³⁰ *Id.* at 12.

³¹ *Id.*

³² Verizon at 1.

³³ *Id.* at 2-3.

³⁴ *Id.* at 5.

³⁵ *Id.* at 3.

³⁶ WorldCom at 1-2.

costs for relay providers and states, and both options are inaccurate.”³⁷ WorldCom feels that having to establish reimbursement relations with every state would be expensive and inefficient and “discourage entry and expansion of IP Relay providers.”³⁸ Also, profiling users would be considered an invasion of privacy. WorldCom notes: “Users would perceive they would be required to provide more personal information with IP Relay than traditional relay.”³⁹ Because there are no toll charges currently associated with IP Relay calls, WorldCom believes the proportion of interstate IP Relay calls to the whole will be larger than traditional TRS. Consequently, “using the existing distribution would unfairly allocate financial responsibility to the states.”⁴⁰

Administrator and Council Findings

NECA, as the TRS Fund Administrator, has managed the *Interstate TRS Fund* since its inception in 1993 and now has more than nine years’ experience working with the shared funding cost recovery mechanism. The Interstate TRS Fund Advisory Council has been involved in monitoring TRS cost recovery matters since 1994. Council members bring a wide range of TRS experience to the table, providing the perspectives of the disability community, users, providers, administrators, regulators, and contributors. Jointly, we present the following IP Relay findings.

1. Relay calls initiated via Internet Protocol (IP Relay) are basically the same as traditional TRS calls initiated via text telephone or computer; the difference is how the relay center is accessed. With traditional TRS, the caller dials 7-1-1 or a toll free number; with IP, access is via the Internet.

³⁷ *Id.* at 3.

³⁸ *Id.*

³⁹ *Id.*

2. The definition of IP Relay does not include Internet access to VRS. Reimbursement for calls to VRS via the Internet is at the VRS rate.
3. No automatic means of determining whether an IP Relay call is intrastate or interstate exist. Internet addresses do not have geographic correlates. There is no Internet address identifier that can automatically provide the location of the caller to the relay center. A resolution of this problem is not in the foreseeable future.
4. TRS providers who are planning to offer IP Relay agree that the costs of traditional TRS and IP Relay are essentially the same. TRS vendors who do not currently plan to offer the service have not investigated the cost of its provision.
5. Salaries and benefits are the main cost causers in relay services. Because only the access to the relay center changes with IP Relay, labor costs for IP Relay are not expected to decrease from traditional TRS labor costs.
6. Telecommunications costs may decrease because originating access charges will be eliminated on IP Relay calls. Terminating access costs will not change.
7. Research and development costs of relay providers may increase.
8. Because IP Relay is expected to be offered on a nationwide basis, marketing costs will increase if providers advertise their services nationally.
9. Providers may need to develop and implement a way to block international to international IP Relay calls.
10. Requiring all IP Relay users to register or create profiles is considered discriminatory, an invasion of privacy, and a deterrent to the use of the service.

- 11 Use of a fixed cost allocator similar to the toll free/900 minute allocator in the early stages of implementing IP Relay could unfairly allocate costs between intrastate and interstate jurisdictions.
- 12 If the Commission determines that some IP Relay costs should be recovered as intrastate, the effort required by the states and the providers will be overly burdensome in administration time and cost.
- 13 In February 2002, relay providers' projected TRS minutes between the US and international locations to be less than 1% (about 200,000 minutes a year) of all interstate and international minutes for 2002 and 2003. IP Relay calls between the US and international locations would be a subset of that projection.
- 14 For the year 2001, providers reported 169,286 international minutes – 0.5% of 33.7 million traditional TRS minutes paid for the year. For 2000, 215,613 international minutes were reported – 0.64% of 33.7 million paid TRS minutes.
- 15 Commenters agree that the Commission has the authority to reimburse all IP Relay calls from the Interstate TRS Fund and reimbursement from the fund is the best-cost recovery method for the service.

RECOMMENDED COST RECOVERY GUIDELINES

Because IP Relay costs are not expected to differ substantially from the costs associated with traditional TRS service, the Administrator and the Council recommend the same national average rate development methodology and cost recovery reimbursement rate as *traditional TRS* service for all IP Relay minutes. Except for the method of accessing the relay center, the characteristics of a traditional *TRS* and an *IP Relay call* are basically the same. The Communications Assistant types to the text user and speaks to the telephone user. The Fund

Administrator will collect IP Relay specific costs and demand projections in the annual TRS Provider Center Data Request to monitor these costs. Current categories on the annual data request are adequate for reporting actual and projected IP Relay expenses and minutes.

IP Relay costs could significantly increase, however, if providers are required to establish and maintain reporting and reimbursement relationships with every state. A fixed allocator would reduce the administrative burden but is not feasible at this time. Only reimbursement from the Interstate TRS Fund for all IP Relay minutes will assure the growth of this innovative service in its early stages. The Commission should revisit IP Relay cost recovery periodically to determine if changes in technology or other circumstances make a change in the funding mechanism workable.

The major concern about IP Relay fraud is the use of US relay services for calls that both originate and terminate outside the US. Considering that legitimate international calling was a small percentage of paid minutes for 2000 and 2001 and an equally small percentage of projected minutes for 2002 and 2003, minutes for Internet Relay should be substantially the same, with the understanding that by providing free toll calling, some increase is to be expected.

To monitor the situation, the Fund Administrator should require providers to track and report international call minutes separately for all TRS services and should review the monthly minute reports, comparing actuals to projections. If actual international minutes trend significantly higher than historical data and projections, further investigation will be warranted. The Fund Administrator should alert the FCC if this occurs.

The Fund Administrator should monitor the monthly provider minute reports and track IP Relay minutes separately to develop a historical base for future projections. The Fund Administrator should include data on IP Relay minutes in the monthly reports it provides the Council and the FCC today.

SUMMARY

After reviewing the Declaratory Ruling and IP Relay cost information collected from TRS providers, both the Administrator and the Council find that there is no need to develop a different cost recovery method or to have a separate reimbursement rate for IP Relay, and accordingly, recommend that the traditional TRS reimbursement rate continue to be applied to IP Relay minutes of use.